

REPRESENTATIVES FOR PETITIONERS:

Ron G. Augustus, *pro se*  
Angela R. Augustus, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Marilyn S. Meighen, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Ron G. & Angela R. Augustus,	)	Petition Nos.:	29-020-04-3-5-00210
	)		29-020-05-3-5-00215
Petitioners,	)		29-020-06-3-5-00082
	)		29-020-07-3-5-00065
	)		29-020-08-3-5-00079
	)		
v.	)	Parcel No.:	19-11-28-00-04-058.000
	)		
	)	County:	Hamilton
	)		
Hamilton County Assessor,	)	Township:	Fall Creek
	)		
Respondent.	)	Assessment Years:	2004, 2005, 2006, 2007 & 2008

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Appeal from the Final Determination of the  
Hamilton County Property Tax Assessment Board of Appeals

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**September 2, 2014**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Introduction

1. Through an error of omission, Roger and Angela Augustus were not given credit for the standard homestead and mortgage deductions for the 2004 through 2008 assessment dates. They are therefore entitled to have those errors corrected. Although the Augustuses also claim that they are entitled to a refund for overpayment of taxes resulting from those errors, that question is not properly before the Board. There is nothing to show that the Augustuses were denied a refund after timely filing a claim under Ind. Code § 6-1.1-26-1.

### Procedural History

2. The Augustuses filed five Form 133 petitions—one for each assessment year from 2004 through 2008. On June 5, 2012, the Property Tax Assessment Board of Appeals (“PTABOA”) denied those petitions. The Augustuses responded by timely filing their Form 133 petitions with the Board.
3. On April 8, 2014, the Board’s administrative law judge, Dalene McMillen, held a hearing on the Augustus petitions. Neither she nor the Board inspected the subject property.
4. Ron and Angela Augustus were sworn in and testified.
5. The Augustus offered the following exhibit:

Petitioner Exhibit 1: Statement of Mortgage or Contract Indebtedness for Deduction from Assessed Valuation, dated November 10, 2003; Claim for Homestead Property Tax Credit/Standard Deduction, dated November 10, 2003; front pages of Form 133 petitions for 2004-2008; additional page from one Form 133 petition; screen shots with information regarding adjustments to tax bills for 2009 pay 2010 through 2011 pay 2012; Form 17T signed by Hamilton County Auditor with tax refund information for 2010 and 2011 payments;

denial of Form 133 cover page together with portions of one Form 133 petition.

6. The Assessor did not offer any exhibits.
7. The following additional items are part of the record:
  - Board Exhibit A: Form 133 petitions with attachments,
  - Board Exhibit B: Hearing notices,
  - Board Exhibit C: Hearing sign-in sheet.
8. The property at issue is a single-family home located at 13315 Eastwood Lane in Fishers.

### **Parties' Contentions**

9. On November 10, 2003, the Augustuses filed a Statement of Mortgage or Contract Indebtedness for Deduction from Assessed Valuation ("Mortgage Statement") and a Claim for Homestead Property Tax Credit/Standard Deduction ("Homestead Claim"). In those documents, the Augustuses certified (1) that they owned the subject property and occupied it as their principal place of residence and (2) that they had an unpaid mortgage. According to Ms. Augustus, they "filed a homestead that was not put into the system," and they seek a refund for the "overage" taxes they paid. *A. Augustus testimony; Pet'rs Ex. 1.*
10. A refund claim form (Form 17T) signed by the Hamilton County Auditor, shows that the Augustuses were refunded money for erroneous tax payments for their 2010 and 2011 tax installments. The form contains the following explanation for the basis of the refund claim: "this taxpayer had timely filed their homestead and mortgage deductions and the deductions were not properly credited to their parcel." *Pet'rs Ex. 1.*
11. The Assessor did not offer any evidence or argument.

## Analysis

12. Although the Augustuses presented only a bare-bones case, there is no dispute that they timely filed claims for a mortgage deduction under Ind. Code § 6-1.1-12-1 and for the standard homestead deduction under Ind. Code § 6-1.1-12-37, but that the Auditor did not process those claims. In the Mortgage Statement and Homestead Claim, both of which were admitted without objection, the Augustuses certified the existence of facts meeting the prerequisites for those deductions. Similarly, the Form 17T and Ms. Augustus's testimony that the "deduction" was not "put into the system" show that the Augustuses did not receive those deductions for any year until 2010 and 2011. Again, the Assessor did not dispute those propositions.
  
13. The Augustuses seek to correct those errors through Form 133 petitions, which the Department of Local Government Finance ("DLGF") has prescribed for use in the correction of error process under Ind. Code § 6-1.1-15-12 ("Petition to Correct Error Statute").<sup>1</sup> That correction of error process is available to correct only a narrow range of specifically identified errors, including that, through "an error of omission by any state or county officer," a taxpayer was not "given a deduction permitted by law." I.C. § 6-1.1-15-12(a)(8). Again, there appears to be no dispute that the Auditor's failure to process the Homestead Claim and Mortgage Statement and apply the accompanying deductions qualify.
  
14. Although the Augustuses waited several years to file their Form 133 petitions, the Indiana Tax Court recently held that there was no deadline for filing a Form 133 petition for the dates at issue in these appeals. *See Hutcherson v. Ward*, 2 N.E.3d 138, 142 (Ind. Tax Ct. 2013) (holding that there was no time limit for filing Form 133 petitions after April 1,

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<sup>1</sup> The statute does not actually contain any reference to a petition, nor even to a taxpayer's right to petition for a correction of an error. The DLGF promulgated Form 133 "Petition for Correction of an Error" in State Form 12483. The right of the taxpayer to petition to correct an error, rather than await action by the assessing official, was established in *Hatcher v. Indiana State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 858 (Ind. Tax Ct. 1990).

2000, when an administrative regulation imposing a three-year filing deadline was repealed).<sup>2</sup>

15. The Augustuses, however, do not simply want errors corrected; they seek a refund for overpayment of taxes resulting from those errors. The Petition to Correct Error Statute does not expressly grant the right to a refund. A separate statute—Ind. Code § 6-1.1-26-1 (“Refund Statute”)—provides an avenue for a taxpayer to claim a refund:

A person, or his heirs, personal representative, or successors, may file a claim for the refund of all or a portion of a tax installment which he has paid. However, the claim must be:

- (1) filed with the auditor of the county in which the taxes were originally paid;
- (2) *filed within three (3) years after the taxes were first due*;
- (3) filed on the form prescribed by the state board of accounts and approved by the department of local government finance; and
- (4) based upon one (1) of the following grounds:
  - (A) Taxes on the same property have been assessed and paid more than once for the same year.
  - (B) The taxes, as a matter of law, were illegal.
  - (C) There was a mathematical error either in the computation of the assessment upon which the taxes were based or in the computation of the taxes.

I.C. § 6-1.1-26-1 (emphasis added).

16. To the extent the Augustuses assume that successfully prosecuting a Form 133 petition automatically entitles them to a refund, they appear to be mistaken. A March 2013 “Fact Sheet” from the Department of Local Government Finance indicates that if a Form 133 petition “is successful and a refund is due, the taxpayer must file a ‘Claim for Refund’ Form 17T with the county auditor.”<sup>3</sup> While a “Fact Sheet” does not have precedential standing, it persuades the Board that this is the current practice among assessing officials. Moreover, this general process has also been outlined by the Indiana Supreme Court:

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<sup>2</sup> Following *Hutcherson*, the Indiana General Assembly amended the Petition to Correct Error Statute to provide that a taxpayer is not entitled to relief unless the taxpayer files a petition to correct error with “(1) with the auditor of the county in which the taxes were originally paid; and (2) within three (3) years after the taxes were first due.” P.L.183-2014, SEC.19; I.C. § 6-1.1-15-12(i) (2014).

<sup>3</sup> <http://www.in.gov/dlgf/files/Petition-for-Correction-of-an-ErrorFactSheet.pdf>.

If the Tax Court had decided a challenge on Form 130 to “a procedure or method used in determining [an] assessment . . . in favor of [the] taxpayer,” that would have constituted a declaration that the taxes were illegal as a matter of law, and then the challenging taxpayer . . . would have been entitled to use Form 133 to have their assessments corrected and Form 17T to obtain refunds.

*Lake County Property Assessment Bd. V. BP Amoco Corp.*, 820 N.E.2d 1231, 1233 (Ind. 200) (emphasis added).<sup>4</sup> The Augustuses do not point to any authority supporting a contrary interpretation, and the Board will not make their case for them.

17. Nothing in *Hutcherson* compels a different result. *Hutcherson* simply holds that the Petition to Correct Error Statute does not contain a statute of limitations, and to graft the statute of limitations from another statute would be improper. *Hutcherson*, 2 N.E.3d at 143-44. In defending the Board’s decision, the assessor argued that “because the petition to correct error assumes the remedy would be a refund [or credit], the limitation period from the Refund Statute must be incorporated into the Petition to Correct Error Statute.” *Id.* at 143. The Tax Court found the assessor’s reasoning “incorrect.” *Id.* While the Court’s rationale might call into question the tandem requirements of filing for both correction of error and a refund claim,<sup>5</sup> any observation in *Hutcherson* beyond its holding that there was no statute of limitations for filing a claim under the Petition to Correct Error Statute is *dicta*. Rather, *Hutcherson* compels the Board to find that, if the statute of limitations provisions of the Refund Statute cannot be grafted onto the Petition to Correct Error Statute, then surely the refund provision of the Refund Statute cannot be grafted onto the Petition to Correct Error Statute.

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<sup>4</sup> Both *BP Amoco* and its companion case, *Lake County Property Tax Assessment Bd. of Appeals v. U.S. Steel*, 820 N.E.2d 1237, 1239 (Ind. 2005), rely heavily on repealed Indiana Administrative Code provisions, though the provisions were still effective during the tax years at issue in those cases. The Supreme Court acknowledged the same, and opined that “we do not discern anything in current law that is inconsistent [with the repealed provisions] or the interpretation we give it today.” *BP Amoco*, 820 N.E.2d at 1234.

<sup>5</sup> The Tax Court noted, “an error of omission by a county officer, as is Hutchersons’ claim, is not an enumerated ground for which a refund can be sought under the Refund Statute; but is a proper ground for filing a petition to correct error.” 3 N.E.3d at 143-44. Taken at face value, that language could suggest that a taxpayer whose alleged error is an “error of omission” is not entitled to a refund even when properly corrected via a Form 133. Conversely, it could suggest that a properly corrected “error of omission” via a Form 133 is entitled to a refund under the Petition to Correct Error Statute as implicit to a correction. Because the Augustuses have articulated neither interpretation, the Board declines to address the merits of either interpretation.

18. Thus, it appears that the Augustuses are not entitled to a refund solely because they successfully prosecuted their Form 133 petitions. They also needed to timely file a claim under the Refund Statute. Their refund claim is not before the Board. Indeed, the record is silent as to whether they timely filed such a claim.

#### **SUMMARY OF FINAL DETERMINATION**

19. Through an error of omission by local officials, the Augustuses were improperly denied credit for the homestead standard deduction and mortgage deduction for the 2004 through 2008 assessment years. That error must be corrected. The Board, however, makes no finding about whether the Augustuses are entitled to a refund for overpayment of taxes.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

#### **- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.